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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

FILE:

Office: NEBRASKA SERVICE CENTER

Date: MAY 11 2004

[LIN 01 211 50469]

IN RE:

Applicant:

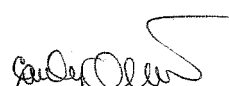
APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who indicated on his application that he entered the United States on August 9, 2000, without a lawful admission or parole. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, counsel states that the decision was in error. According to counsel, the evidence submitted by the applicant, namely an affidavit from his cousin's wife and money order receipts, are sufficient to establish the applicant's date of entry into the United States, and his continuous residence, and physical presence in the United States during the qualifying period. Counsel claims that the director's decision failed to cite any law, regulation, or precedent that asserted that the applicant's documentation was insufficient.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

- (iii) The applicant is a parolee or has a pending request for parole; or
- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service (now the Bureau) director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and,
- (3) The purposes for the absence from the United States or action while outside of the United States were not contrary to law.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by the Bureau. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The record reflects that the applicant filed his TPS application on June 21, 2001. In support of his claim of eligibility for TPS, the applicant submitted an affidavit from a [REDACTED] who indicated that the applicant was a relative of her husband. Ms [REDACTED] stated in the affidavit that she met the applicant in August 2000 when he arrived in the United States, and that she has knowledge that he has continuously resided here since that time.

On August 6, 2001, the applicant was provided the opportunity to submit evidence establishing his residence since February 13, 2001, and his physical presence since March 9, 2001, in the United States. The applicant was informed at that time of the type of documentation that would be acceptable to establish his eligibility for TPS. In response, the applicant submitted copies of three money order receipts purportedly purchased by the applicant in Bellefontaine, Ohio, on February 1, 2001, February 17, 2001, and March 18, 2001. The director determined that the evidence submitted did not substantiate clear and convincing evidence of the applicant's date of entry, continuous residence, and physical presence. The director denied the application on February 25, 2002.

On appeal, counsel states that the evidence submitted by the applicant is sufficient to establish his date of entry into the United States, and his continuous residence and physical presence in the United States during the qualifying period. Counsel also claims that the director's decision failed to cite any law, regulation, or precedent that asserted that the applicant's documentation was insufficient

In the decision, the director cites 8 C.F.R. § 244.9(a)(2) which provides a list of acceptable evidence to establish proof of continuous residence in the United States. The copies of the money order receipts provided by the applicant are not supported by any corroborative evidence. The applicant provided copies of three sets of money order documents. On the top of the page are photocopies of purchase agreements with the date and amount printed on the document. On the bottom of the page are photocopies of Money Order Tracing/Refund Requests. While the dates on the sets of documents match, there is nothing to establish that they are interrelated. Counsel is correct in stating that money order receipts may be accepted as evidence; however, the regulations do not suggest that these receipts alone are necessarily sufficient to establish an applicant's qualifying residence and physical presence in the United States. The applicant claims to have lived in the United States since August 9, 2000, but offers only the money order receipts and one affidavit from a relative as evidence that he has continuously resided and been physically present in the United States since 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these receipts; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility and probative value. 8 C.F.R. § 244.9(b).

It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and physical presence requirements described in §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.